

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**WISCONSIN ENERGY CORPORATION, INTEGRYS
ENERGY GROUP, INC., PEOPLES ENERGY, LLC, THE
PEOPLES GAS LIGHT AND COKE COMPANY,
NORTH SHORE GAS COMPANY, ATC MANAGEMENT
INC., and AMERICAN TRANSMISSION COMPANY
LLC**

**Application pursuant to Section 7-204 of the Public Utilities
Act for authority to engage in a Reorganization, to enter
into agreements with affiliated interests pursuant to Section
7-101, and for such other approvals as may be required
under the Public Utilities Act to effectuate the
Reorganization.**

DOCKET No. 14-0496

**MOTION TO STRIKE
AND
REPLY BRIEF ON EXCEPTIONS
OF
THE CITY OF CHICAGO AND THE CITIZENS UTILITY BOARD**

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The City of Chicago (“City”) and the Citizens Utility Board (“CUB”) (together “City/CUB”), pursuant to Sections 200.190 and 200.830 of the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), and the briefing schedule established by the Administrative Law Judge (“ALJ”) in this case, file their Motion to Strike and Reply Brief on Exceptions to the Proposed Order issued in this proceeding on May 14, 2025 (Proposed Order” or “PO”). 82 Ill. Adm. Code 200.190, 200.830.

I. MOTION TO STRIKE

The filing styled Joint Applicants’ Brief on Exceptions is an improper filing that is not authorized by Section 200.830 of the Commission’s Rules of Practice. The filing does not meet the Commission’s codified requirements for a brief on exceptions to a proposed order. City/CUB move that the Joint Applicants’ filing be stricken from the record.

The Joint Applicants’ filing does not provide (or support) exceptions to any part of the Proposed Order. Whether “exceptions” is read to mean substantive challenges to a finding or conclusion of the Proposed Order, or language to take the place of portions of the Proposed Order, the Joint Applicants’ filing does not qualify. Accepting filings like that the Joint Applicants submitted would compel parties to repeat the process of filing initial and reply briefs that are not focused exclusively on errors in the Proposed Order. That interpretation would make the Commission’s distinct rules in Section 200.830 superfluous, and the Commission’s post-hearing procedures would be duplicative and uneconomical.

As there are no exceptions in the Joint Applicants' filing, there is no basis for a brief on exceptions under 200.830(a), to explain non-existent recommended changes. The filing must be stricken.

In case the Commission does not strike the unauthorized filing, City/CUB respond to the Joint Applicants' gratuitous praise and support for the Proposed Order, in the remainder of this submission.

II. REPLY B RIEF ON EXCEPTIONS ARGUMENTS

A. Introduction

The Joint Applicants' "Brief on Exceptions," which takes no exception to the Proposed Order, includes unqualified praise for the Proposed Order. Such excessive enthusiasm suggests that the Commission should carefully evaluate the Proposed Order's findings and conclusions, to ensure that the interests of ratepayers and the Joint Applicants are properly balanced. A Proposed Order that prompts such eagerness from the Joint Applicants impels close Commission scrutiny of whether ratepayers' interests are adequately represented and protected. The Commission should be cautious in adopting a Proposed Order for which the Joint Applicants have nothing but applause, and should instead consider the substantive review (and adopt the alternative conclusions) offered in the City/CUB Brief on Exceptions.

B. Effect of Reorganization on AMRP and Implementation of Liberty Recommendations

Section 7-204(b) of the Public Utilities Act ("Act") requires that a reorganization shall not be approved if it will adversely affect the utility's ability to perform its duties under the Act. 220 ILCS 5/7-204(b). There can be no legitimate question at this point that PGL's Accelerated Main Replacement Program ("AMRP") has not been implemented as intended by the

Commission. The Commission's auditor determined that the AMRP requires significant and immediate improvements and that continuing the program at its current performance level is not prudent or reasonable. Liberty Report at ES-1, B-4. In other words, the current state of PGL's AMRP guarantees that its continuation without improvement cannot satisfy the Section 7-204(b)(1) requirements.

City/CUB, in their testimony and briefs, have repeatedly demonstrated that action is required in this docket to ensure that the state of the already foundering AMRP program is not further diminished by management changes resulting from the proposed reorganization. The Commission may "impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers," in a proposed reorganization. The Commission should exercise that authority now, to protect ratepayers from the risks associated with ownership and management changes in the midst of implementing the Liberty Auditors' recommendations. 220 ILCS 5/7-204(f).

The Joint Applicants contend that "[t]he evidence demonstrates that the Reorganization will not disrupt or 'diminish'" the processes for improvement of the AMRP set forth in the Liberty Report, claiming that Wisconsin Energy is experienced in successfully managing large-scale capital programs. JA RBOE at 4-5. The evidence set forth by City/CUB demonstrated just the opposite, and the Liberty Report relates that the magnitude of PGL's AMRP is unique and one of the largest undertakings of its kind in the country. Liberty Report at B-2. Unless their self-serving qualifications (incorporated in the Proposed Order's conditions) are met, the Joint Applicants have not committed to (1) timely completion of the AMRP or (2) implementation of all of Liberty's recommendations. *See* PO Appendix A Condition Nos. 5 and 9 (continuation of AMRP only "assuming [PGL] receives and continues to receive appropriate cost recovery;

implementation of Liberty recommendations only if “possible to implement, practical and reasonable... and cost-effective” in the Joint Applicants’ opinion); JA BOE at 5-6. The Joint Applicants’ claims of readiness to take over the AMRP and to implement Liberty’s recommendations are particularly unconvincing, given that (a) Wisconsin Energy did not request a detailed AMRP work plan as part of its due diligence review, (b) the Agreement and Plan of Merger does not address AMRP, and (c) the Joint Applicants have not developed a transition plan despite the known deficiencies of PGL’s implementation. CUB Ex. 3.1 (JA-AG 4.01); JA Response to Commissioner Data Request No. 1, tr. at 208:21 -209:4 (Leverett). The Joint Applicants’ lack of transition plans to ensure seamless transition of AMRP management means the Commission does not even know whether key AMRP personnel will be retained and their critical institutional knowledge preserved. The Joint Applicants (and the Proposed Order) have therefore failed to show how they will ensure that the AMRP will not be diminished, and that the Liberty recommendations will be implemented at least as well as they would have been absent the reorganization.

The Joint Applicants’ bold claims that the reorganization will not affect the AMRP or implementation of Liberty’s recommendations are not supported by the record. This docket is the Commission’s only opportunity to impose conditions on all of the Joint Applicants to ensure that the AMRP is not diminished by the reorganization. The Commission must therefore adopt conditions that “protect the interests of the public utility and its customers” and ensure the reorganization will not diminish PGL’s ability to provide adequate, reliable, efficient, safe and least-cost public utility service. 220 ILCS 5/7-204(b)(1), 7-204(f).

C. 7-204(c) 7-204(b)(7) Savings Allocation and Transition Costs

The Joint Applicants state that “the Joint Applicants agreed that they may recover ‘transition costs’ only to the extent that those costs produce savings, and then only those transition costs that are incurred in a rate case test year.” JA BOE at 8. The Joint Applicants treat that simple statement as a conclusive demonstration of “the findings required by Section 7-204(c) regarding the allocation savings and recovery of costs.” 220 ILCS 5/7-204(c). However, the reality defined by the record in this case, which the Joint Applicants (and the Proposed Order) have persistently avoided, is not at all that simple. And that more complicated reality affects the required allocation under Section 7-204(c), as well as the findings required by Sections 7-204(b)(7) and 7-204(f). 220 ILCS 5/7-204(b)(7), 7-024(f). The Joint Applicants’ proposed identification of reorganization (transition) cost/savings and their ratemaking treatment of transition costs and savings are materially different from the circumstances and proposals this Commission has reviewed and approved in past decisions under Section 7-204.

First, the factual circumstances in this record case and the concepts the Joint Applicants introduce to identify the transition costs and associated savings used in ratemaking are novel. Those features distinguish this case from Commission approvals in past reorganization cases. In previous cases, the record evidence included estimates of reorganization costs and savings, showed that anticipated savings were insignificant, or allowed the Commission to make allocation determinations for quantified savings. Here, the Joint Applicants have refused to provide savings estimates, they anticipate significant savings (3-5% of tens of millions), and they have frustrated all efforts to quantify costs, savings, or rate impacts. *See* Tr. 369 (Reed); JA Init. Br. at 5; City/CUB Init. Br. at 81, 41. Moreover, in past cases, no party challenged the allocation or ratemaking treatments with record evidence that examined the results of the Joint Applicants’

proposed definitions, lack of protocols, and purposeful delay in realized savings. Such evidentiary challenges are abundant and un rebutted in this record.

In addition, at no stage of this proceeding have the Joint Applicants acknowledged or addressed these critically different circumstances; nor has the Proposed Order. The Joint Applicants also have not explained how the distinctly more complicated concepts they propose to use for transition cost and savings ratemaking could actually work, much less how they would protect ratepayers from improper cost recovery. *See* City/CUB Init. Br. at 68-77; City/CUB Reply Br. at 34-42. In their cross-examination and their earlier briefs, City/CUB examined in greater detail the distinctive features of the Joint Applicants' costs/saving and proposals, and the resulting unresolved problems, which include the following.

- The unexplained use of “net savings” forecasted over multi-year project periods to limit transition cost recovery, without a lawful mechanism to correct over-recovery when expected savings are not achieved -- even when “net savings” turn out to be negative and should (per Proposed Order’s recommended condition) preclude any recovery at all.
- The required (but unexplained) simultaneous use of test year costs and transition costs whose recovery is capped by multi-year, actual or projected “net savings,” under a Proposed Order condition that could require return of over-collections.
- The impossibility of (a) accurately identifying those transition costs that are ineligible for rate recovery because they were not incurred specifically to achieve savings and (b) determining “net savings” over the entire period of a cost-saving initiative, if there are not protocols in place to track the purposes of incurred costs and the cumulative quantities of costs and savings (over the entire relevant period)
- The difficulty of implementing capping rate recovery of transition costs at the level of associated “net savings,” when costs are incurred and savings are achieved at different paces, so that costs exceed savings in some years and be less in others, and the Joint Applicants have not explained how test year selection affects rate recovery eligibility.

Id. The Proposed Order assumes, without any evidentiary basis, that Joint Applicants will timely develop and implement new cost tracking protocols that can satisfy the Proposed Order’s

recommended ratemaking conditions, as well as applicable law (in particular, the bar against retroactive ratemaking). Without some evidence that such novel protocols are even possible (and their likely results), the Commission cannot make sustainable findings that adverse rate impacts are not likely or that ratepayer interests are protected. The Joint Applicants have provided no such record evidence; indeed, they have only recently begun considering the conundrums their proposals present. Tr. 408, 474-475 (Reed); City/CUB Init. Br. at 68-77; City/CUB Reply Br. at 34-42 (reviewing several puzzling scenarios).

In addition, the Joint Applicants ignore the adverse rate impacts that may flow from their undeveloped, logically inconsistent, and overlapping ratemaking concepts. City/CUB explored those likely impacts extensively in their Initial Brief. City/CUB Init. Br. at 73-74 (scenarios describing costs and savings at different paces, interplay of test year costs concepts and multi-year project costs, and alternative “net savings” calculations). The Proposed Order exhibits the same determined neglect. As a result, the Proposed Order fails to properly apply the adverse rate impact test, as it is defined by Section 7-204(b)(7). Similarly, the Proposed Order does not examine the need for conditions to protect ratepayers under the Joint Applicants’ novel transition costs/savings ratemaking, as required by Section 7-204(f).

The Joint Applicants acknowledge an obligation “in future rate cases [to] identify any transaction costs included in the test period and demonstrate that they are not included in the rate case for recovery.” They portray that transaction cost obligation as an effective rebuttal to City/CUB’s proposal “that the Joint Applicants be required to produce a detailed tracking mechanism for purposes of tracking transition costs and related savings.” JA BOE at 9 (emphasis added). The bait and switch (transaction for transition costs) provides no response to the problems City/CUB have identified. More telling is the fact that the Joint Applicants have

refused several opportunities to commit to make the same rate case showing for transition costs that they commit to make for the less significant transaction costs.

But even if analogous information were provided for test year transition costs, that information does not provide the information the Commission needs to quantify the multi-year conceptual amounts the Commission would need to quantify for transition cost ratemaking -- as the Joint Applicants envision it. In particular, the Commission cannot determine the associated “net savings” that make particular transition costs eligible for rate recovery, or the “net savings” cap on recovery of related transition costs from a single year’s information. *See City/CUB Init. Br. at 72-74.* And nothing else the Joint Applicants have provided in this record explains how the Commission will quantify those conceptual amounts.

On the evidence in this record, the rate impacts of the Joint Applicants’ novel transition cost/savings ratemaking are unknowable, precluding the findings required for approval. The Commission cannot find on this record that adverse rate impacts, resulting from the Proposed Order’s adoption of the Joint Applicants’ novel concepts and ratemaking, are not likely.

. 220 ILCS 5/7-204(b)(7). In addition, the uncertainty about the Joint Applicants’ currently non-existent protocols for their transition cost identification, net savings calculations, and simultaneous application of logically inconsistent ratemaking concepts makes it impossible for the Commission to determine that additional conditions to protect rate payers are not required. At a minimum, City/CUB’s proposed conditions should be imposed to mitigate the unknowable impacts.

Although the Joint Applicants do not dispute their burden of proving that each statutory criterion has been met (JA Reply Br. at 8), their proof comprises little more than the conclusory assurances contained in their comments on the Proposed Order. With absolutely no indication of

whether or how the problems described above can be dealt with lawfully, the Commission cannot make sustainable findings that adverse rate impacts are not likely and responsive ratepayer protections are unnecessary. .

D. Ring Fencing Condition

The Joint Applicants praise the Proposed Order for denying the City/CUB and AG-supported ring-fencing provisions that would ensure prioritization of capital improvements over dividend payouts to the parent company. JA RBOE at 9. The Joint Applicants highlight the fact that one credit rating agency stated that it does not expect the additional debt used to finance the merger to impact the parent company's credit rating. *Id.* at 10. "Thus," say the Joint Applicants, "the evidence fails to support the need for restrictions on dividends paid by the Gas Companies..." *Id.*

That one line cited by the Joint Applicants, which only applies to the *parent company's* credit rating, is not the only or most corroborated evidence in the record on the utilities' ability to raise capital on reasonable terms following the merger or their commitment to funding capital projects. Quite the contrary is true – City/CUB provided evidence from all three credit rating agencies as well as equity analyst UBS. All indicated negative credit outlooks following the reorganization. CUB Cross Ex. 3, CUB Cross Ex. 2. The Joint Applicants have chosen to ignore that evidence. While the Proposed Order at least acknowledged it, it nonetheless declined (without further explanation) to impose ring fencing protections required by the weight of the evidence. PO at 51.

As noted by the Joint Applicants in their fervent approval of the Proposed Order, the Proposed Order cited several commitments that purportedly reduce the risks of downgraded credit for ratepayers and diverted infrastructure improvement funding. JA BOE at 10, PO at 51.

As explained previously by City/CUB (Reply Br. at 24-28, BOE at 33-35), the Joint Applicants' proposed commitments, which the Proposed Order adopts without change as conditions, and Section 7-103(2) do not provide adequate ratepayer protection. Independently or in combination, they do nothing to ensure that AMRP and other critical infrastructure improvements will be fully and timely funded before dividends are paid out. City/CUB explain the reasons they are inadequate more fully in earlier briefs and testimony. City/CUB Init. Br. at 34-35; 39-41; City/CUB Reply Br. at 24-28; City/CUB BOE at 31-35; City/CUB Ex. 8.0 at 8-10.

The Joint Applicants claim that, under Section 7-103(2), they are "already subject to provisions of the Act which preclude the types of actions with which City/CUB and the AG are concerned." JA BOE at 10. If that were true, the Joint Applicants should have no reason to resist the ring-fencing provision, which should only be redundant to provisions to which the Joint Applicants are subject. The Joint Applicant's position – and their BOE – should tell the Commission that the City/CUB proposed ring fencing provision provides far greater ratepayer protection, and the Joint Applicants thus are ardently opposed to it.

E. Rate Freeze

The Joint Applicants merely rehash criticisms of City/CUB's and the AG's extension of the rate freeze commitment (from two years to five years), claiming the Proposed Order correctly rejected it. Their attempt to bolster the Proposed Order's rationale for rejecting City/CUB's recommendation tramples any reasonable boundaries of a lawful exceptions brief, but also puts words in the Proposed Order's mouth that are simply not there. First, Joint Applicants argue that City/CUB's and the AG's stated reason for their proposed modification – to generate more benefits for customers – is not an appropriate grounds for the Commission to impose such a condition under Section 7-204. JA BOE at 11-12. This is an improper response to the Proposed

Order, which did not conclude that the rate freeze inappropriately generated more benefits for customers.

Nonetheless, City/CUB thoroughly refuted such a claim in their Reply Briefs. What City/CUB and the AG seek in supporting an extension of the rate freeze is not an inequitable benefit for customers. *See* City/CUB Reply Br. at 54-57. The rate freeze is supported by the tremendous revenue stability provided to PGL through multiple risk reducing rider mechanisms, (City/CUB Ex. 4.0 at 8:185-187), as well as by the Joint Applicants' claim that net savings are expected to accrue as a result of the merger (see JA Ex. 17.0, 5:83-87). The proposed transaction will benefit PGL's ultimate investors, and a longer base rate freeze will provide a concomitant benefit in the form of a consumer protection intended to protect utility customers from the burden of a fifth rate increase in just 7 years. Additionally, the financial stability or integrity of the Joint Applicants is not compromised by an extension of the rate freeze, considering the Joint Applicants could seek a rate increase sooner than five years if their financial integrity is compromised.

Next, the Joint Applicants' support the Proposed Order's conclusion – and reiterate evidence allegedly supporting it – that because North Shore does not have a Rider QIP in place, it has no means to recover capital expenditures between rate cases. JA BOE at 12. This criticism – like the Proposed Order – fails to acknowledge that North Shore Gas is not implementing the same capital-intensive accelerated main replacement program that PGL is, and therefore does not require such a rider. Furthermore, North Shore has other mechanisms like a bad debt rider, storage service rider, implementation of a decoupling mechanism in 2012, and the existence of a rider to recover manufactured gas plant site cleaning costs that, coupled with the savings that it should enjoy as a result of the reorganization, make a five year rate freeze

reasonable for North Shore as well. City/CUB Ex. 4.0 at 5:127-129; City/CUB Ex. 8.0 at 4:72-78.

Lastly, the Joint Applicants claim that an extension of the rate freeze is unnecessary because savings are expected to accrue over time. JA BOE at 12. This position ignores the obvious perverse incentive generated by a short two-year rate freeze period, which is the approximate length between the last five of PGL/NS's rate cases (so cannot be reasonably considered a benefit at all). Such a short rate freeze period would incent the utilities to postpone realization of cost-saving measures until after the next rate case. As a result, adverse rate impacts could result from the Joint Applicants' disincentive to obtain cost-saving synergies prior the time at which the freeze period ends. A longer period would encourage the Joint Applicants to capture more of those available savings, which should offset any claimed revenue deficiencies. City/CUB therefore request that the Commission adopt their exceptions language on this issue and extend the rate freeze commitment to five years to provide the necessary protections from adverse rate effects resulting from the reorganization.

III. CONCLUSION

The Joint Applicants repeat (without improvement) the flawed arguments addressed in City/CUB's Initial and Reply Briefs. They support findings and conclusions of the Proposed Order that are -- as explained above or in City/CUB's Brief on Exceptions -- are not supported by the record and unsustainably arbitrary. The Joint Applicants also support legal reasoning and conclusions that are arbitrary and fail to faithfully apply the statutory standards defined by Section 7-204, as City/CUB also showed. The exceptions proposed and supported in City/CUB's Brief on Exceptions should be adopted.

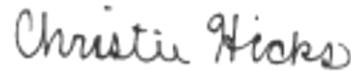
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